

Message Text

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PAGE 01 MANILA 08650 060229Z
ACTION L-03

INFO OCT-01 EA-09 ISO-00 SCA-01 /014 W
-----060230Z 078311 /65
R 060149Z JUN 77
FM AMEMBASSY MANILA
TO DEPTJUSTICE WASHDC
INFO SECSTATE WASHDC 729

UNCLAS MANILA 8650

FOR RISTAU FROM BUTLER

E.O. 1165WC N/A
TAGS: N/A
SUBJECT: LINGAT VS UNITED STATES, CFI PAMPANGA, CIVIL NO. 4450

REF: DOJ MSG, DTG 261533Z MAY 77

1. PURSUANT TO REFTEL, THE FOLLOWING IS THE SUBSTANCE OF
THE COMMENTS BY ATTORNEY SAN JUAN:

QUOTE: I MADE THAT MANIFESTATION ON THE BASIS OF
MR. RISTAU'S LETTER DATED APRIL 22, 1977...

IN THE MANIFESTATION, I DID NOT STATE THAT THE MATTER
OF PROPRIETY/IMPROPRIETY OF THE TERMINATION OF THE CONTRACT
FOR SALE OF SCRAP STEEL IS AN ISSUE WHICH THE ASBCA
COULD/COULD NOT DECIDE. I DID NOT SAY EITHER THAT INVOLVED
ARE NO QUESTIONS OF FACT OR BOTH QUESTIONS OF FACT AND LAW.
THE MANIFESTATION WAS INTENDED SOLELY TO APPRISE THE
PHILIPPINE COURT THAT U.S. DEPARTMENT OF DEFENSE ADMINISTRA-
TIVE PROCEDURES HAVE REMAINED AVAILABLE TO LINGAT IN VIEW
OF HIS "PROPERLY FILED...APPEAL" TO THE SECRETARY OF DEFENSE.

I SHOULD TELL YOU THAT OFF-THE-RECORD STATEMENTS
MADE BY MR. LINGAT'S COUNSEL TO THE JUDGE COMPLAINED
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THAT SALES CONTRACTING OFFICER ESCOTA'S LETTER OF
NOVEMBER 16, 1976 HAD CLOSED THE DOOR TO FURTHER
ADMINISTRATIVE PROCEEDINGS AND LEFT NO OTHER RECOURSE
BUT TO SEEK JUDICIAL REMEDY. THE JUDGE LOOKED AT ME
QUIZZICALLY. TO ENSURE THAT THE COURT WOULD NOT
CONSIDER THE ADMINISTRATIVE APPEAL PROCEDURE EITHER
INADEQUATE OR UNAVAILABLE AND, HENCE, NON-EXHAUSTION

OF ADMINISTRATIVE REMEDIES IS NOT A GOOD DEFENSE, I
FELT THAT NO LESS THAN A FORMAL ASSURANCE TO THE COURT
ON MAY 23 THAT MR. LINGAT'S APPEAL IS BEFORE THE ASBCA AND
AN INVITATION TO MR. LINGAT TO PURSUE THAT APPEAL WERE
INDISPENSABLE. I HAD IN MIND SOUTHEASTERN OIL OF
FLORIDA INC. V. U.S., 127 CT. CL. 480 (1953), AND U.S. V.
GRACE & SONS, INC., 384 U.S.424 (1966).

I HOPE TO RECEIVE MR. RISTAU'S INSTRUCTIONS UPON
YOUR TRANSMITTAL TO HIM OF THE CONTENTS OF THIS
LETTER. THE TRAIL IS SCHEDULED ON JUNE 20, 1977 AT
2 PM. AMENDMENT OR CLARIFICATION OF THE MANIFESTATION
AS TO THE CORRECT POSITION OF THE U.S. WILL NOT CREATE
ANY PROBLEM. END QUOTE.
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Message Attributes

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Decaption Note:
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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
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Disposition History: n/a
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